

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Petitioner,

v.

THOMAS P. MURPHY,

Respondent.

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED

JUL 30 2013

LAWRENCE K. BAERMAN, CLERK
ALBANY

Civil Action No. 13-MC- 42
(DNH/CFH)

PETITION TO ENFORCE
INTERNAL REVENUE SERVICE SUMMONS

The United States of America, Internal Revenue Service, by its attorney, RICHARD S. HARTUNIAN, United States Attorney for the Northern District of New York, THOMAS SPINA, JR., Assistant United States Attorney, of counsel, avers to this Court as follows:

I.

This is a proceeding brought pursuant to the provisions of 26 U.S.C. §§ 7602 and 7604(a), to judicially enforce an Internal Revenue Service summons.

II.

Kimberly Quantas is a Revenue Officer of the Internal Revenue Service, who is authorized to issue an Internal Revenue Service summons pursuant to the authority contained in 26 U.S.C. § 7602 and Treasury Regulations, § 301.7602-1, 26 C.F.R. § 301.7602-1.

III.

The Respondent, Thomas P. Murphy, resides at 2305 Harmony Mills Lofts, Cohoes, NY 12047, and is within the jurisdiction of this Court.

IV.

On January 22, 2013, an Internal Revenue Service summons relevant to the taxable periods ending December 31, 2003, December 31, 2004, December 31, 2006, December 31, 2010, and December 31, 2011, was issued by Revenue Officer Kimberly Quantas, directing Respondent, Thomas Murphy, to appear before Revenue Officer Quantas on February 13, 2013 at 8:00 a.m., at 11A Clinton Avenue, Suite 521, Albany, New York 12207-2335, to testify and to produce for examination books, papers, records, or other data more fully described in the summons. Exhibit 1-A.

V.

On January 22, 2013, an Internal Revenue Service summons relevant to the taxable periods ending December 31, 2007, December 31, 2008, and December 31, 2009, was issued by Revenue Officer Kimberly Quantas, directing Respondent, Thomas Murphy, to appear before Revenue Officer Quantas on February 13, 2013 at 8:00 a.m., at 11A Clinton Avenue, Suite 521, Albany, New York 12207-2335, to testify and to produce for examination books, papers, records, or other data more fully described in the summons. Exhibit 2-A.

VI.

On February 13, 2013, the respondent, Thomas P. Murphy, failed to appear and comply with the summonses. The respondent's failure to comply with the summonses continues to date.

VII.

The books, papers, records or other data sought by the summonses are not in the possession of the Internal Revenue Service.

VIII.

All administrative steps required by the Internal Revenue Code for the issuance of a

summons have been taken.

IX.

It is necessary to obtain the testimony and to examine the books, papers, records, or other data sought by the summons in order to investigate the federal tax liability of Thomas P. Murphy, for the taxable periods ending December 31, 2003, December 31, 2004, December 31, 2006, December 31, 2010, and December 31, 2011, as is evidenced by the Declaration of Revenue Officer Quantas, attached as Exhibit 1 and incorporated herein as part of this Petition.

X.

It is further necessary to obtain the testimony and to examine the books, papers, records, or other data sought by the summons in order to investigate the federal tax liability of Thomas P. Murphy, for the taxable periods ending December 31, 2007, December 31, 2008, December 31, 2009, as is evidenced by the Declaration of Revenue Officer Quantas, attached as Exhibit 2 and incorporated herein as part of this Petition.

XI.

The respondent, Thomas P. Murphy, is in possession and control of the books, records, and other papers and documents or has knowledge relating to the above-described investigation.

XII.

The respondent's failure to comply with the summonses continues to date.

XIII.

It is the practice of this Court to proceed by Order to Show Cause in these matters.

XIV.

If granted, the Order to Show Cause sought herein will be personally served upon the respondent/taxpayer pursuant to FED. R. CIV. P. 4 and 4.1. Thereafter, in order to expedite

conclusion of this matter and minimize expenditure of time by the U.S. Marshals Service or other government personnel in connection with this matter, service of any further pleadings or papers filed by petitioner herein (not including any arrest order) in accordance with FED. R. CIV. P. 5 would be helpful and appropriate.

XV.

No previous application has been made for the order or relief sought herein.

WHEREFORE, the petitioner, the United States of America, Internal Revenue Service, respectfully prays:

1. That the Court enter an Order directing the respondent, Thomas A. Murphy, to show cause, if any, why he should not comply with and obey the aforementioned summonses and each and every requirement thereof.

2. That the Court enter an Order directing the respondent, Thomas A. Murphy, to obey the aforementioned summonses and each and every requirement thereof by ordering the attendance, testimony and production of the books, papers, records, or other data as is required and called for by the terms of the summonses before Revenue Officer Quantas, or any other proper officer or employee of the Internal Revenue Service, at such time and place as may be fixed by the Revenue Officer, or any other proper officer or employee of the Internal Revenue Service.

3. That the Court enter an Order authorizing service and filing of other pleadings and papers herein (not including any arrest order) in accordance with FED. R. CIV. P. 5.

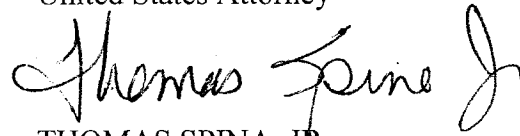
4. That the Court grant such other and further relief as is deemed just and proper.

Respectfully submitted,

Dated: July 29, 2013

RICHARD S. HARTUNIAN
United States Attorney

By:

A handwritten signature in black ink, appearing to read "Thomas Spina Jr", written over a horizontal line.

THOMAS SPINA, JR.
Assistant U.S. Attorney
James T. Foley U.S. Courthouse
445 Broadway, Room 218
Albany, NY 12207
Telephone: (518) 431-0247
Facsimile: (518) 431-0249
Bar Roll No. 102653
Thomas.Spina@usdoj.gov

EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Petitioner

v.

THOMAS MURPHY

Respondent.

13-mc-42

Civil Action No.

U.S. DISTRICT COURT
N.D. OF N.Y.

FILED

JUL 30 2013

DECLARATION

LAWRENCE K. BAERMAN, CLERK
ALBANY

KIMBERLY A QUANTAS declares:

1. I am a duly commissioned revenue officer employed in the Small Business/Self-Employed Division North Atlantic Compliance Area of the Internal Revenue Service at 11A CLINTON AVENUE, SUITE 521, ALBANY, NY 12207-2335.
2. In my capacity as a revenue officer I am conducting an investigation for the collection of tax liability of THOMAS P MURPHY for the calendar year(s) ended: December 31, 2003, December 31, 2004, December 31, 2006, December 31, 2010, December 31, 2011 .
3. In furtherance of the above investigation and in accordance with Section 7602 of Title 26, U.S.C., I issued on 01/22/2013, an administrative summons, Internal Revenue Service Form 2039, to THOMAS MURPHY, to produce for examination books, papers, records, or other data as described in said summons. The summons is attached to the petition as Exhibit A.
4. In accordance with Section 7603 of Title 26, U.S.C., on 01/22/2013, I served an attested copy of the Internal Revenue Service summons described in Paragraph (3) above on the respondent, THOMAS MURPHY, by leaving a copy at the last and usual

place of abode, as evidenced in the certificate of service on the reverse side of the summons.

5. On 2/12/2013 THOMAS MURPHY left a message on my Voice Messaging System stating he will not be able to make tomorrow's appearance. On 02/13/2013, the respondent THOMAS MURPHY, did not appear in response to summons. The respondent's refusal to comply with the summons continues to the date of this declaration.

6. The books, papers, records, or other data sought by the summons are not already in the possession of the Internal Revenue Service.

7. All administrative steps required by the Internal Revenue Code for issuance of a summons have been taken.

8. It is necessary to examine the books, papers, records, or other data sought by the summons in order to collect the federal tax liability of THOMAS P MURPHY for the calendar year(s) ended December 31, 2003, December 31, 2004, December 31, 2006, December 31, 2010, December 31, 2011.

"Under penalty of perjury, pursuant to 28 U.S.C section 1746 that the statements are true, except those on information and belief and as to those I believe them to be true"

Executed this 5th day of April, 2013.


KIMBERLY A QUANTAS, REVENUE OFFICER

EXHIBIT 1-A



Summons

In the matter of THOMAS P. MURPHY

Internal Revenue Service (Division): Small Business / Self Employed

Industry/Area (name or number): Small Business / Self Employed - Area 21

Periods: ending: December 31, 2003, December 31, 2004, December 31, 2006, December 31, 2010, December 31, 2011

The Commissioner of Internal Revenue

To: THOMAS P. MURPHY

At: 2305 HARMONY MILLS LOFTS, COHOES, NY 12047

You are hereby summoned and required to appear before KIMBERLY A QUANTAS, an officer of the Internal Revenue Service, to give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the tax liability or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws concerning the person identified above for the periods shown.

All documents in your possession and control reflecting the assets and liabilities of the above named taxpayer(s) including, but not limited to, the following: all bank statements, checkbooks, canceled checks, savings account passbooks, and records of certificates of deposit, for the period JANUARY 1, 2012 to DECEMBER 31, 2012, regarding accounts or assets held in the name of the taxpayer(s) or held for the benefit of the taxpayer(s); all records or documents regarding stocks and bonds, deeds or contracts regarding real property, current registration certificates for motor vehicles, and life or health insurance policies currently in force, any of which items are owned, wholly or partially, by the taxpayer(s), or in which the taxpayer(s) have a security interest, or held for the benefit of either or both of the taxpayer(s), so that a current Collection Information Statement may be prepared. A blank copy of such Collection Information Statement is attached hereto to guide you in the production of the necessary documents and records.

Attestation

I hereby certify that I have examined and compared this copy of the summons with the original and that it is a true and correct copy of the original.

Signature of IRS Official Serving the Summons

Title

Business address and telephone number of IRS officer before whom you are to appear:

11A CLINTON AVENUE, SUITE 521, ALBANY, NY 12207-2335 - (518)427-4184

Place and time for appearance at: 11A CLINTON AVENUE, SUITE 521, ALBANY, NY 12207-2335



on the 13th day of February, 2013 at 08:30 o'clock A m.

Department of the Treasury
Internal Revenue Service

www.irs.gov

Issued under authority of the Internal Revenue Code this _____ day of January, 2013

KIMBERLY A QUANTAS

Signature of Issuing Officer

REVENUE OFFICER

Title

Form 2039 (Rev. 10-2010)
Catalog Number 21405J

Signature of Approving Officer (if applicable)

Title

Part A – to be given to person summoned



Service of Summons, Notice and Recordkeeper Certificates

(Pursuant to section 7603, Internal Revenue Code)

I certify that I served the summons shown on the front of this form on:

Date <u>January 22, 2013</u>	Time <u>10:50 a.m.</u>
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**How
Summons
Was
Served**

1. ☐ I certify that I handed a copy of the summons, which contained the attestation required by § 7603, to the person to whom it was directed.
2. ☒ I certify that I left a copy of the summons, which contained the attestation required by § 7603, at the last and usual place of abode of the person to whom it was directed. I left the copy with the following person (if any): in Apt 2305 down in Sealed envelope
3. ☐ I certify that I sent a copy of the summons, which contained the attestation required by § 7603, by certified or registered mail to the last known address of the person to whom it was directed, that person being a third-party recordkeeper within the meaning of § 7603(b). I sent the summons to the following address: _____

Signature <u>[Signature]</u>	Title <u>Revenue Officer</u>
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4. This certificate is made to show compliance with IRC Section 7609. This certificate does not apply to summonses served on any officer or employee of the person to whose liability the summons relates nor to summonses in aid of collection, to determine the identity of a person having a numbered account or similar arrangement, or to determine

whether or not records of the business transactions or affairs of an identified person have been made or kept.

I certify that, within 3 days of serving the summons, I gave notice (Part D of Form 2039) to the person named below on the date and in the manner indicated.

Date of giving Notice: _____ Time: _____

Name of Noticee: _____

Address of Noticee (if mailed): _____

**How
Notice
Was
Given**

- | | |
|---|--|
| <input type="checkbox"/> I gave notice by certified or registered mail to the last known address of the noticee. | <input type="checkbox"/> I gave notice by handing it to the noticee. |
| <input type="checkbox"/> I left the notice at the last and usual place of abode of the noticee. I left the copy with the following person (if any). | <input type="checkbox"/> In the absence of a last known address of the noticee, I left the notice with the person summonsed. |
| | <input type="checkbox"/> No notice is required. |

Signature _____	Title _____
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I certify that the period prescribed for beginning a proceeding to quash this summons has expired and that no such proceeding was instituted or that the noticee consents to the examination.

Signature _____	Title _____
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EXHIBIT 2

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA

Petitioner

v.

THOMAS MURPHY

Respondent.

13-mc-42
Civil Action No.

DECLARATION

KIMBERLY A QUANTAS declares:

1. I am a duly commissioned revenue officer employed in the Small Business/Self-Employed Division North Atlantic Compliance Area of the Internal Revenue Service at 11A CLINTON AVENUE, SUITE 521, ALBANY, NY 12207-2335.
2. In my capacity as a revenue officer I am conducting an investigation into the tax liability THOMAS P MURPHY for the calendar year(s) ended: December 31, 2007, December 31, 2008, December 31, 2009.
3. In furtherance of the above investigation and in accordance with Section 7602 of Title 26, U.S.C., I issued on 01/22/2013, an administrative summons, Internal Revenue Service Form 2039, to THOMAS MURPHY, to produce for examination books, papers, records, or other data as described in said summons. The summons is attached to the petition as Exhibit A.
4. In accordance with Section 7603 of Title 26, U.S.C., on 01/22/2013, I served an attested copy of the Internal Revenue Service summons described in Paragraph (3) above on the respondent, THOMAS MURPHY, by leaving a copy at the last and usual

place of abode, in a sealed envelope, as evidenced in the certificate of service on the reverse side of the summons.

5. On 2/12/2013 THOMAS MURPHY left a message on my Voice Messaging System stating he will not be able to make tomorrow's appearance. On 02/13/2013, the respondent THOMAS MURPHY, did not appear in response to summons. The respondent's refusal to comply with the summons continues to the date of this declaration.

6. The books, papers, records, or other data sought by the summons are not already in the possession of the Internal Revenue Service.

7. All administrative steps required by the Internal Revenue Code for issuance of a summons have been taken.

8. It is necessary to examine the books, papers, records, or other data sought by the summons in order to properly investigate the federal tax liability of THOMAS P MURPHY for the calendar year(s) ended December 31, 2007, December 31, 2008, December 31, 2009,

"Under penalty of perjury, pursuant to 28 U.S.C section 1746 that the statements are true, except those on information and belief and as to those I believe them to be true"

Executed this 5th day of April, 2013.


KIMBERLY A QUANTAS, REVENUE OFFICER

EXHIBIT 2-A



Service of Summons, Notice and Recordkeeper Certificates

(Pursuant to section 7603, Internal Revenue Code)

I certify that I served the summons shown on the front of this form on:

Date <u>January 22, 2013</u>	Time <u>10:50 a.m.</u>
---------------------------------	---------------------------

**How
Summons
Was
Served**

1. ☐ I certify that I handed a copy of the summons, which contained the attestation required by § 7603, to the person to whom it was directed.

2. ☒ I certify that I left a copy of the summons, which contained the attestation required by § 7603, at the last and usual place of abode of the person to whom it was directed. I left the copy with the following person (if any): 102nd 23rd door in sealed envelope

3. ☐ I certify that I sent a copy of the summons, which contained the attestation required by § 7603, by certified or registered mail to the last known address of the person to whom it was directed, that person being a third-party recordkeeper within the meaning of § 7603(b). I sent the summons to the following address: _____

Signature <u>Kimberly Deaton</u>	Title <u>Revenue Officer</u>
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4. This certificate is made to show compliance with IRC Section 7609. This certificate does not apply to summonses served on any officer or employee of the person to whose liability the summons relates nor to summonses in aid of collection, to determine the identity of a person having a numbered account or similar arrangement, or to determine

whether or not records of the business transactions or affairs of an identified person have been made or kept.

I certify that, within 3 days of serving the summons, I gave notice (Part D of Form 2039) to the person named below on the date and in the manner indicated.

Date of giving Notice: _____ Time: _____

Name of Noticee: _____

Address of Noticee (if mailed): _____

**How
Notice
Was
Given**

☐ I gave notice by certified or registered mail to the last known address of the noticee.

☐ I left the notice at the last and usual place of abode of the noticee. I left the copy with the following person (if any): _____

☐ I gave notice by handing it to the noticee.

☐ In the absence of a last known address of the noticee, I left the notice with the person summonsed.

☐ No notice is required.

Signature	Title
-----------	-------

I certify that the period prescribed for beginning a proceeding to quash this summons has expired and that no such proceeding was instituted or that the noticee consents to the examination.

Signature	Title
-----------	-------



Summons

In the matter of THOMAS P. MURPHY

Internal Revenue Service (Division): Small Business / Self Employed

Industry/Area (name or number): Small Business / Self Employed - Area 21

Periods: ending: December 31, 2007, December 31, 2008, December 31, 2009

The Commissioner of Internal Revenue

To: THOMAS P. MURPHY


At: 2305 HARMONY MILLS LOFTS, COHOES, NY 12047

You are hereby summoned and required to appear before KIMBERLY A QUANTAS, an officer of the Internal Revenue Service, to give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the tax liability or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws concerning the person identified above for the periods shown.

All documents and records in your possession or control reflecting the receipt of taxable income by you for the year(s) ending: December 31, 2007, December 31, 2008, December 31, 2009, including but not limited to: statement of wages for the year(s) ending: December 31, 2007, December 31, 2008, December 31, 2009, statements regarding interest or dividend income for the year(s) ending: December 31, 2007, December 31, 2008, December 31, 2009; employee earnings statements for the year(s) ending: December 31, 2007, December 31, 2008, December 31, 2009; records of deposits to bank accounts during the year(s) ending: December 31, 2007, December 31, 2008, December 31, 2009; and any and all other books, records, documents, and receipts regarding wages, salaries, tips, fees, commissions, and any other compensation for services (including gains from dealings in property, interest, rental, royalty and dividend income, alimony, annuities, income life insurance policies and endowment contracts, pensions, income from the discharge of indebtedness, distributive shares of partnership gross income, and income from an estate or trust), so that Federal Income Tax liability for the year(s) ending: December 31, 2007, December 31, 2008, December 31, 2009 (for which year(s) no return have been made) may be determined.

Attestation

I hereby certify that I have examined and compared this copy of the summons with the original and that it is a true and correct copy of the original.


Signature of IRS Official Serving the Summons

Revenue Officer
Title

Business address and telephone number of IRS officer before whom you are to appear:

11A CLINTON AVENUE, SUITE 521, ALBANY, NY 12207-2335 - (518)427-4184

Place and time for appearance at: 11A CLINTON AVENUE, SUITE 521, ALBANY, NY 12207-2335



on the 13th day of February, 2013 at 08:30 o'clock A m.

Issued under authority of the Internal Revenue Code this _____ day of January, 2013

Department of the Treasury
Internal Revenue Service

www.irs.gov

KIMBERLY A QUANTAS

Signature of Issuing Officer

REVENUE OFFICER

Title

Form 2039 (Rev. 10-2010)
Catalog Number 21405J

Signature of Approving Officer (if applicable)

Title